female attendant made no attempt to intercept or apprehend the person. The complainant herself, when questioned, told a somewhat confused story that she had been taken outside by two or three persons and raped. She was examined 6 to 7 hours after the incident by a Medical Officer, who found that she was not, in fact, a virgin, and he also found no evidence of spermatozoa that would indicate that sexual intercourse had recently taken place.

The sole evidence of identification in this case is that of the complainant herself. Some days later, namely, on the 14th September, an identification parade was held in which 56 persons were present on the parade, those persons being the members of the staff of the hospital. The complainant was told — and quite wrongly told — by the Police Officer that there were 56 persons on the parade and the person who had raped her, and she was invited by the Police Officer to inspect the persons on the parade and point out the person who had raped her. Quite clearly that was a wholly improper direction by the Police Officer. At most he should, of course, have indicated to her that there might be present on the parade the person whom she alleged to have raped her. The complainant walked the full length of the parade without identifying any person and the Police Officer then told her that she should look at the faces of the persons on the parade. She then proceeded down the line and after she had got about half-way she pointed out the present appellant. There was no other evidence of identification. The complainant herself when giving her evidence told — at any rate as it appears on the record of the case — a somewhat confused and unintelligible story in that she stated that two persons had entered the ward and that the persons had carried out not only herself but another woman in the ward. She then said that she had, in fact, only been raped by one and not two persons. The story which she told was inconsistent with and, indeed, contradictory to, the previous statements that she made to the Doctor in charge of the hospital.

The learned Magistrate in his grounds of decision refers to the fact that he found the evidence of the complainant "unusually convincing." He then goes on to say that such evidence was corroborated by the identification of the appellant by the complainant at the identification parade. Now it is elementary, of course, that a witness cannot corroborate his own testimony and that independent evidence is required to constitute corroboration. There was no such independent evidence in this case. In my view, it might well have been unsafe to convict on such evidence in a case where the complainant had been a person of completely sane mind. It was very much more unsafe to convict in a case such as this, where the complainant was a patient in a mental home, in the absence of any corroborative evidence whatsoever as to the identification of the alleged assailant. The learned Deputy Public Prosecutor does not seek to support the conviction in this case. For these reasons I am of the opinion, and I so direct, that the appeal must be allowed, the conviction quashed, and the sentence set aside.

Appeal allowed.

PUBLIC PROSECUTOR v. SAM KIM KAI

[A. Cr. J. (Rigby J.) August 12, 1960]

[Penang — Criminal Appeal No. 18 of 1960]

Criminal Law and Procedure — Receiving stolen property — Explanation given by accused — Mere possibility of its truth insufficient to warrant acquittal — Explanation must raise genuine and reasonable doubt as to the guilt of the accused — Penal Code, s.411.

Procedure — Discretion of trial court to allow accused, before sentence, to withdraw plea of guilty and substitute plea of not guilty — Discretion must be exercised judicially and for valid reasons.

The respondent was charged with dishonestly retaining stolen property contrary to the provisions of section 411 of the Penal Code. He was found wearing a wrist watch which was conclusively identified as the property of the complainant and which was stolen from the complainant's premises a few months before. The respondent was the next door neighbour of the complainant. At his trial before the learned President of the Sessions Court, the respondent gave evidence that he had purchased the watch from a friend named Ah Seok for $20 about three months earlier. He failed however to produce Ah Seok as a witness at his trial. The respondent also said that he borrowed money to buy the watch from his sister, and this evidence was corroborated by the sister. The learned President acquitted the respondent.

On appeal by the learned Deputy Public Prosecutor on the ground that the learned President misdirected himself in law, and as a direct result of that misdirection placed too high a value on the respondent's story without giving adequate and proper consideration to the intrinsic worth of that story;

Held: (1) it is not sufficient, on a charge of receiving stolen property, for the accused to give an explanation which the court thinks may possibly be true. The explanation must be such as to raise a genuine and reasonable doubt as to whether the accused was guilty. However, although the learned President described the respondent's story as one that "could possibly be true," it is quite clear from his judgment as a whole that, having heard the respondent's explanation, he came to the conclusion that the explanation might not only possibly but reasonably be true. There could therefore be no question of the learned President having misdirected himself in law;

(2) it may well be that a court differently constituted, bearing in mind that the respondent was the next door neighbour of the complainant and that he failed to produce, or account for the absence of, the witness from whom he said he had bought the watch, would have come to a different conclusion in this case. But the learned President was the judge of fact, and on the facts before him; if he was left in honest and genuine doubt, he was perfectly entitled to acquit the respondent.

Appeal dismissed.

Observations made as to the discretion vested in a trial court to allow an accused person, before sentence, to withdraw a plea of guilty and to substitute a plea of not guilty.

Cases referred to:—

(1) *Public Prosecutor* v. *Soong Chak Sung* [1955] M.L.J. 144.

(2) *R.* v. *Aves* [1950] 2 All E.R. 330.

(3) *R.* v. *McNally* [1954] 2 All E.R. 372.

MAGISTRATE'S CRIMINAL APPEAL.

J. P. Kirby (Deputy Public Prosecutor) for the appellant.

Triptipal Singh for the respondent.

Rigby J.: This was an appeal by the learned Deputy Public Prosecutor from a decision of the learned President of the Sessions Court, sitting at George Town, Penang, acquitting the respondent on the charge preferred against him of dishonestly retaining property knowing or having reason to believe it had been stolen, contrary to the provisions of section 411 of the Penal Code.

The facts of the case were simple and straightforward. On the morning of the 31st January, 1960, the occupant of a house at Tanjong Tokong woke up and found that his house had been broken into either during the early hours of that morning or during the previous night. Amongst the property stolen was his wrist watch. I will hereafter refer to him as the complainant.

On the morning of the 26th May, 1960, a Police party, acting on information received from an informer, lay in wait for and detained the respondent as he was cycling along a public road. He was wearing a wrist watch, which was subsequently conclusively identified as the property of the complainant and as the watch stolen from his premises during the course of the housebreaking on the night of the 30th January or the early hours of the following morning.

The respondent is a student, aged 19, and lives at home with his family. He is also the next door neighbour of the complainant. He was duly charged and prosecuted. At his trial he gave evidence that he had purchased the watch from a friend named Ah Seok for the sum of $20 about three months previously. He said that he had asked Ah Seok for a receipt but that Ah Seok had said that it was not necessary. During the period between his release on bail and the date of his trial — a period of 13 days — he had looked for his friend Ah Seok, but without success. He further said that at the time he was arrested he then informed the Police that he had purchased the watch from Ah Seok, and that they had accompanied him to Ah Seok's house, but they were unable to find him. The respondent was represented by Counsel at his trial, but there was no cross-examination of the Police Officers by Counsel to establish whether or not this allegation was true. The respondent said that he had borrowed money to buy the watch from his sister. The respondent's sister, for what her evidence was worth, corroborated this evidence. The learned President acquitted the respondent.

The learned Deputy Public Prosecutor's sole ground of appeal is that the learned President misdirected himself in law, and as a direct result of that misdirection he placed too high a value on the story told by the respondent, and the manner with which he told it in the witness box, without giving adequate and proper consideration to the intrinsic worth of that story and its degree of probability of truth in relation to the facts established by the prosecution. In support of that contention he relied upon the operative part of the learned President's grounds of decision which, after reciting the evidence adduced before him, commences with the sentence:—

"After hearing the defence story I came to the conclusion that it could possibly be true."

Now, the Federation Court of Appeal, in the case of *Public Prosecutor* v. *Soong Chak Sung*,(1) following an earlier authority of its own Court based upon the English case of *Rex* v. *Aves*,(2) laid down quite clearly that in cases of knowingly receiving stolen property it is not sufficient for the accused to put forward some story, in explanation as to how he came to be in innocent possession of the stolen property, which the Court thinks may possibly be true. If the mere possibility as to its truth was a sufficient ground, in itself, to warrant the acquittal of the accused, then any plausible story which he might choose to fabricate to account for his possession of the stolen property would be such as to justify his acquittal. In order to warrant such an acquittal the defence put forward must be a story which leaves the Court — whether it be a trial by a Judge or Magistrate sitting alone, or a trial by jury — in genuine and reasonable doubt as to whether the explanation put forward by the accused that he did not know the property was stolen, may not, in fact, be true. If the Judge — or jury — believes his explanation then, of course, he — or they — must acquit. Similarly, if they disbelieve his story, they must convict.

The learned Deputy Public Prosecutor contended that as a result of the learned President having misdirected himself in this manner by saying that the story told by the accused "could possibly be true", he had consequently failed to appreciate the inherent weakness and defects in the story itself in relation to the established facts. In particular, he contended that he had failed to consider and to take into account the all important fact that if the story was true it was extraordinary that the respondent was not able to produce the vital witness Ah Seok from whom he said he had bought the watch. Now, no doubt the expression used by the learned President that the defence story "could possibly be true" was unfortunate and should not have been used. But it is, I think, quite clear from the sentence immediately following it, to wit:—

"The accused gave his evidence in quite a frank manner and I can believe that he was telling the truth."

that the learned President, having heard the respondent's evidence, believed that he was telling the truth and that the explanation he had given for possession of the property might not only possibly but reasonably be true. Again, in the concluding paragraph of his judgment he stated:—

"After considering the defence story I come to the conclusion that it might well be true that the accused did, in fact, purchase the watch from Ah Seok and for this reason I have some doubt as to the guilt of the accused. And following the decision in the case of *Public Prosecutor* v. *Soong Chak Sung* (already cited) I find the accused not guilty and I acquit him."

It seemed to me clear, therefore, that there could be no question of the learned President having misdirected himself in law. Having heard the explanation given by the respondent as to how he came to be in possession of the stolen property, the learned President came to the conclusion that that explanation might reasonably be true and it left him in a genuine doubt as to whether the respondent knew or had reason to believe that the property in his possession was stolen property. He accordingly acquitted the respondent.

I would only add that some Magistrates may have a greater trust in the general honesty of human nature than others, and they may more readily accept and believe explanations from accused persons which other Magistrates would find no difficulty in rejecting as wholly incredible and unworthy of belief. It may well be that a Court differently constituted, bearing in mind that the respondent was the next door neighbour of the complainant and the fact that the respondent had failed to produce, or account for the absence of, the witness from whom he said he had bought the watch, would have come to a different conclusion in this case. But the learned President was the judge of fact, and on the facts before him, if he was left in an honest and genuine doubt, he was perfectly entitled to acquit the respondent. It was for these reasons that I had no hesitation in dismissing this appeal.

There is, however, one further matter, to which I would refer before leaving this case. The respondent was originally charged with the main offence of housebreaking. To that charge he pleaded guilty. The learned President, before passing sentence upon him, perfectly properly remanded him in custody with a view to obtaining a report upon him from the Probation Officer. When the matter again came before him 7 days later, the respondent was represented by an advocate, Mr. Triptipal Singh, who informed the Court that his client wished to withdraw his plea of guilty. The learned President thereupon permitted him to do so and to substitute therefor a plea of not guilty. Subsequently, the charge of housebreaking was withdrawn by the prosecution and the present charge of dishonestly retaining stolen property substituted therefor.

Now, there is, no doubt, a discretion vested in a trial Court to allow an accused person, before sentence, to withdraw a plea of guilty and to substitute a plea of not guilty. But that discretion requires to be exercised judicially and for valid reasons. An accused person cannot be permitted merely at whim to change his plea, except upon valid and sufficient grounds which satisfy the Magistrate that it is proper in the interests of justice that he should be allowed to do so. (See the case of *R.* v. *McNally*[3] and the cases cited in *Mallal's Criminal Procedure*, 4th edition, pp. 254 - 5)." In this case there is nothing upon the record to indicate that the respondent did not understand the nature of the original charge of housebreaking which was read to him, and to which he pleaded guilty, nor is there anything to show upon what grounds he sought to change his plea 7 days later, and why the learned President exercised his discretion in allowing him to do so. It is to be hoped that in future cases where a Magistrate thinks fit to exercise his judicial discretion in this manner, the grounds upon which the exercise of the discretion is sought, and the reasons which prompt the Magistrate to exercise it, will be fully stated upon the record.

Appeal dismissed.

THE COMPTROLLER OF INCOME TAX v. D. E. F.

[A. C. J. (Chua J.) August 12, 1960]

[Singapore — District Court Appeal No. 34 of 1959]

Revenue — Scheme of purchase and re-sale — Single transaction of purchase and sale of land — Whether profit therefrom liable to income tax.

Income Tax Ordinance (Cap. 166), s.10(1)(a) — "Trade" or "Business" — Whether isolated transaction constitute a "trade" or a "business" — Capital or income gain — Determination.

The taxpayer on December 22, 1955 purchased a rubber estate in Ipoh for $240,000, which he had borrowed from his rich brother free of interest. He never saw the estate. Within 18 days, on January 9, 1956, he sold the estate to the X. Garden Estates Ltd. for $485,000, thereby making a profit of $245,000. One of the two directors of X. Garden Estates Ltd. was W, the brother-in-law of the taxpayer's wife, and the negotiations for the sale of the rubber estate were done with W. The other director of X. Garden Estates Ltd., S., was the taxpayer's neighbour, and S.'s wife was a good friend of the taxpayer's family. It was S.'s wife who informed the taxpayer that the rubber estate was for sale. Both the taxpayer's wife and his rich brother were shareholders in X. Garden Estates Ltd. The taxpayer repaid the loan he took from his brother from the profit and kept the balance which he later invested. This was an isolated transaction in land and the taxpayer was not the nominee of any person or company.

The Comptroller of Income Tax made an additional assessment for the year 1956, upon the taxpayer in the sum of $69,121.48 on an income of $245,000, being the profit derived by the taxpayer from the sale of the rubber estate. The taxpayer appealed to the Income Tax Board of Review on the ground that the sale did not constitute the carrying out of a trade within the meaning of section 10(1)(a) and therefore the profit therefrom was not income within the meaning of section 10(1) of the Income Tax Ordinance. The taxpayer told the Board that, in buying the estate, his intention was to lease it out to some contractor to tap the rubber; he tried to get a contractor in December, 1955, but could not get one, so he sold the estate.